

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

In re:	)	Chapter 11
	)	
EASTERN LIVESTOCK CO., LLC,	)	Case No. 10-93904-BHL-11
	)	
Debtor.	)	

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**MOTION TO APPROVE COMPROMISE OF CONTROVERSY BETWEEN  
EASTERN LIVESTOCK CO., LLC AND FIRST BANK AND TRUST COMPANY**

James A. Knauer, the Chapter 11 Trustee appointed in this case ("Trustee"), by counsel, respectfully moves this Court for an Order approving a proposed compromise (the "Motion") with First Bank and Trust Company ("First Bank"). The proposed settlement liquidates disputes over funds claimed by the Trustee and First Bank and resolves other controversies and litigation pending in this case ("Chapter 11 case"). The proposed compromise, set forth below, is a just and efficient means of settling the matters between the parties. In support of the Motion, the Trustee respectfully represents the following:

**PRELIMINARY BACKGROUND**

1. Certain petitioning creditors commenced the above-captioned Chapter 11 case against the Debtor on December 6, 2010 (the "Petition Date") by filing an involuntary petition for relief under Chapter 11 of the Bankruptcy Code. This Court entered an Order For Relief in An Involuntary Case and Order to Complete Filing [Dkt. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Dkt. No. 102] (the "Trustee Order") pursuant to 11 U.S.C. § 1104.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief sought herein are 11 U.S.C. § 105(a) and FED. R. BANKR. P. 9019.

### **BACKGROUND**

5. First Bank was a lender to Thomas P. Gibson ("Gibson"), the Debtor's principal and managing member. Gibson filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code (the "Gibson Case") with the Court on December 1, 2010. Kathryn Pry is the duly appointed and acting chapter 7 trustee (the "Gibson Trustee") in the Gibson Case. First Bank and the Trustee have each filed a proof of claim in the Gibson Case.

6. The Trustee, the Gibson Trustee, and First Bank all assert interests in \$4,700,000 in funds (the "Seized Funds") that were seized from a Gibson-controlled account and that are in the process of being forfeited from a Gibson controlled bank account at Your Community Bank by the Department of Justice/United States Attorney for the Western District of Kentucky ("US Attorney").

7. First Bank has been an active participant in the Chapter 11 Case and the Gibson Case. First Bank has asserted various claims against Debtor, the Seized Funds, the Trustee, and the Trustee's professionals. On or about September 13, 2012, First Bank filed a notice of appeal from an order of the Court denying a motion filed by First Bank to remove the Trustee, commencing an appeal to the United States District Court (the "Appeal").

8. The Trustee initiated an adversary proceeding in the Chapter 11 Case (Adv. Proc. No. 12-59077) and now pursues various claims against First Bank (the "Adversary").

9. First Bank, the Trustee and other parties participated in a Court-authorized two-day mediation session on October 9 and October 10, 2012 in Louisville, Kentucky. As a result of that mediation and further negotiations, the Parties have agreed to settle their disputes as more fully set forth in the Settlement Agreement and Mutual Release attached hereto as Exhibit 1.

10. Trustee believes the proposed compromise as set forth in Exhibit 1 is in the best interest of Debtor's estate and Debtor's creditors.

### **BRIEF IN SUPPORT**

#### **A. The Settlement Is Fair and in the Best Interests of the Debtors' Estates and Should Be Authorized Pursuant to Bankruptcy Rule 9019(a).**

11. Bankruptcy Rule 9019(a) authorizes a bankruptcy court, on motion by a trustee and after appropriate notice and a hearing, to approve a compromise or settlement so long as the proposed compromise or settlement is fair and equitable and in the best interest of the estate. See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994) ("In conducting a hearing under Rule 9019(a), the bankruptcy court is to determine whether the proposed compromise is fair and equitable and in the best interests of the bankruptcy estate.") (internal citations omitted); In re Andreuccetti, 975 F.2d 413, 421 (7th Cir. 1992) (Bankruptcy Rule 9019(a) authorizes the court to approve a settlement if "the settlement is in the best interests of the estate."); In re Energy Co-op, Inc., 886 F.2d 921, 927 (7th Cir. 1989) ("[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate.").

12. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. See Fogel v. Zell, 221 F.3d 955, 960 (7th Cir. 2000) ("Judges naturally prefer to settle complex litigation than to see it litigated to the hilt,

especially when it is litigation in a bankruptcy proceeding — the expenses of administering the bankruptcy often consume most or even all of the bankrupt's assets."); In re Martin, 91 F.3d 389, 393 (3d Cir. 1996) ("To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy").

13. It is well-settled that a proposed settlement need not be the best result that the debtor could have achieved, but only must fall "within the reasonable range of litigation possibilities." Energy Co-op, 886 F.2d at 929.

14. As further guidance, the Seventh Circuit has offered the following guidelines:

Central to the bankruptcy judge's determination is a comparison of the settlement's terms with the litigation's probable costs and probable benefits. Among the factors the bankruptcy judge should consider in [the] analysis are the litigation's probability of success, the litigation's complexity, and the litigation's attendant expense, inconvenience, and delay.

LaSalle Nat'l Bank v. Holland (In re Am. Reserve Corp.), 841 F.2d 159, 161 (7th Cir. 1987) (citations omitted).

15. The Settlement, negotiated at arm's length and in good faith, achieves a result that is in the best interest of the Debtor and its estate. As set forth more specifically in Exhibit 1, the Settlement resolves pending litigation, avoids a dispute concerning a proposed objection to the proposed Chapter 11 Plan of Liquidation, helps coordinate the efficient distribution of the Seized Funds, resolves further controversy over distribution of certain purchase money funds now held in escrow by the Trustee, releases First Bank's proofs of claim in this Chapter 11 case, and it provides for a release of claims between First Bank, Debtor, Trustee, and the Trustee's professionals.

16. For these reasons, the Settlement maximizes the value of the Debtor's assets and minimizes the burden to its estate while providing First Bank greater certainty as to its rights and its collateral. The Settlement should be approved pursuant to Bankruptcy Rule 9019.

### NOTICE

17. The Trustee will provide notice of this Motion pursuant to FED. R. BANK. P. 2002(a)(3) or as otherwise directed by this Court. The Notice shall include a definitive time in which any party claiming an interest in the funds to be distributed to First Bank and to the Trustee pursuant to the Settlement will be required to file and serve an objection stating with specificity its objection and the basis for asserting a claim.

### NO PRIOR REQUEST

18. No prior motion for the relief requested herein has been made to the Court in this case.

### CONCLUSION

For the foregoing reasons, the Trustee respectfully request that this Court enter an order approving the proposed compromise, as it is in the best interests of the Debtor and the estate.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Kevin M. Toner

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 30, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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